

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
2/27/02 Item No.

File Number  
CP01-04-032 and V01-07-023

Application Type  
Conditional Use Permit and Development Variance

Council District  
6

Planning Area  
South San Jose

Assessor's Parcel Number(s)  
455-45-004

### PROJECT DESCRIPTION

Completed by: Darren McBain

Location: Northerly terminus of Dow Drive approximately 500 feet westerly of Highway 87 (Guadalupe Freeway)

Gross Acreage: 8.9      Net Acreage: 8.9      Net Density: n/a

Existing Zoning: A-Agriculture      Existing Use: 272-foot-diameter welded steel water storage tank

Proposed Zoning: No change      Proposed Use: Replacement of existing water tank with a 280-foot-diameter water tank

### GENERAL PLAN

Completed by: Darren McBain

Land Use/Transportation Diagram Designation  
Public/Quasi-Public

Project Conformance:  
☒ Yes    ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: Darren McBain

North: Attached unit senior housing      R-1-5 (PD) Residence

East: Single-family detached residential, hillside open space      A(PD) Planned Development

South: Single-family detached residential      A(PD) Planned Development

West: Hillside open space, rural single family detached residential      A-Agriculture

### ENVIRONMENTAL STATUS

Completed by: Darren McBain

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: Darren McBain

Annexation Title: Canoas No. 27

Date: 11/24/98

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval  
☐ Approval with Conditions

Date:

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### OWNER/DEVELOPER

San Jose Water Company  
1265 S. Bascom Avenue  
San Jose, CA 95128

---

**PUBLIC AGENCY COMMENTS RECEIVED**

---

Completed by: Darren McBain

**Department of Public Works**

See attached memorandum

---

**Other Departments and Agencies**

N/A

---

**GENERAL CORRESPONDENCE**

---

None

---

**ANALYSIS AND RECOMMENDATIONS**

---

**BACKGROUND**

The applicant, San Jose Water Company, is requesting a Conditional Use Permit and a Development Variance to allow removal and replacement of one of two existing 272-foot-diameter, 40-foot-high welded steel water storage tanks that were constructed between in the 1960's. The tanks are located at the top of a hill at the northerly terminus of Dow Drive, approximately 500 feet westerly of Highway 87. The existing tanks are readily visible from Highway 87. The site is generally surrounded by residential land uses most of which are single-family detached, and by areas of hillside open space.

The Zoning Ordinance requires a Conditional Use Permit for installation of utility facilities in the A-Agriculture Zoning District. In this instance a Development Variance is being requested since the replacement tank proposal does not conform to the 300-foot setback requirement and exceeds the allowable height of 35 feet.

**Project Description**

The proposed project includes replacement of an existing 272-foot-diameter, 40-foot-tall, 15-million-gallon water tank with a new 280-foot-diameter, 39 foot-tall 16-million-gallon tank. The replacement tank is part of a seismic retrofit program to make the water tank safer in the event of an earthquake. The new tank is proposed to be placed in essentially the same location as the existing tank, and will match in size and height another existing tank located approximately 20 feet away on the same parcel. The base of the proposed tank will be situated at the same elevation as the existing tank. The existing grading, landscaping, and fencing on the site will be retained.

**GENERAL PLAN CONFORMANCE**

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi-Public.

**ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from further environmental review pursuant to Section 15302 of the CEQA Guidelines. This section provides an exemption

for “replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced”.

## **ANALYSIS**

Key issues analyzed for the proposed project are (1) compatibility with adjacent land uses, and (2) the granting of a Development Variance to reduce the required 300-foot setbacks and allow the height to exceed the maximum height limit of 35 feet identified in the A-Agriculture Zoning District.

### Compatibility with Adjacent Land Uses

The location of the proposed tank is surrounded by steeply sloping hillside open space and by residential land uses. Although the proposed water tank is eight feet larger in diameter and one foot shorter in height, the overall size change is not likely to be discernable from off-site. The steel exterior of the new tank, painted light green to match that of the existing, will not cause any additional visual impacts.

The sole purpose of the tank replacement is to provide a water tank that will conform to current seismic standards so that it will be less susceptible to failure in the event of a significant seismic event thus affording a better level of protection to the surrounding community. Water tanks of this kind are carefully engineered and constructed and are not considered a risk to the public.

Although construction of the project will likely generate some amount of truck traffic through the new residential development to the south during construction, the prefabricated design should allow for a faster construction period. No grading will be necessary since the new tank will be situated in the same location of the present structure. Daily operation and maintenance of the tanks is a low-intensity land use.

Although the new water tank will, by necessity, form a high-profile feature of the landscape, the approximately 300 existing trees on the site (all to remain) help mitigate the inevitable visual impacts.

### Development Variance

The applicant is requesting a Development Variance from the A-Agriculture Zoning District requirements to vary from the strict requirements with regard to 1) the 300 foot setback requirement and 2) the 35-foot height limit. The project proposes a minimum setback of 37 feet and a height of 40 feet at the new water tank’s highest point.

The Zoning Ordinance provides criteria for issuance of Development Variances (Sections 20.100.1300 through 20.100.1330). A Variance should only be granted due to special circumstances uniquely applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings. The unique circumstances of the property must cause a hardship to the property owner in order to justify the authorization of the Variance. The Variance should not impair the utility or value of adjacent property or the general welfare of the

neighborhood, nor adversely affect the interests of the public at large, and must not grant a “special privilege” inconsistent with the limitations on other nearby properties<sup>1</sup>.

In the present case, a Variance from the A-Agriculture Zoning District’s setback and height requirements is justified by the fact that the site is less than 600 feet wide making the placement of any new structure, including a water tank, impossible to conform to the ordinance requirements. At 280 feet in diameter, the tank is simply too large to provide for a 300-foot setback from any of the site’s property lines. Due to hydraulic constraints, the new tank must be similar placed on a hill such as this in order to provide appropriate water pressure for public necessity in the service area and maintain an appropriate pressure balance between the two water tanks. The applicant has identified 37 feet as the minimally operational height for this facility.

The size and height of the proposed water tank are not considered “negotiable,” given that 1) the tank is an essential public utility that will continue to provide needed water storage capacity and conform to current seismic standards, 2) tanks of this kind are engineered and prefabricated to certain standardized specifications. Custom-construction of a water tank that has a smaller footprint (and potentially much taller) would place a hardship on the water company and would likely cause a significant visual impact. Finally, 3) the proposal is for replacement of an existing tank of similar size and capacity, in essentially the same location.

The 300-foot setback in the A-Agriculture Zoning District was generally intended to preclude new, non-agricultural related development from occurring on remaining vacant agriculturally zoned lands within the city limits. Unfortunately no exceptions were included in the Ordinance’s language to account for public necessity or replacement of existing facilities on sites that are already developed. Prior to adoption of the revised Zoning Ordinance in 2001, a 50-foot setback would have been required. Due to the new 300-foot minimum setback, no new water tank of any size or height would be possible on the site without a Variance.

Approval of this project will not impair the utility or value of adjacent property or the general welfare of the neighborhood, nor adversely affect the interests of the public at large, in that the net result of construction of the new tank will be little different from the existing situation. On the contrary, failure to approve the project would impair the San Jose Water Company’s future ability to provide a needed public resource and potentially expose the surrounding community to some level of risk in the event of an earthquake induced structural failure of the existing water tank.

## **PUBLIC OUTREACH**

A public hearing notice was mailed to the owners and tenants within 500 feet of the subject site and staff has been available to respond to any questions regarding the project.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

---

<sup>1</sup> *Curtin’s California Land Use and Planning Law*, 21<sup>st</sup> Edition (2001).

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A-Agriculture Zoning District.
3. The Zoning Ordinance requires a Conditional Use Permit for installation of utility facilities in the A-Agriculture Zoning District.
4. The A-Agriculture Zoning District has a required setback of 300 feet from any residential property, and a height limit of 35 feet.
5. Single-family detached residential uses and hillside open space generally surround the subject site.
6. The proposal includes a minimum setback of 37 feet from an adjacent residential property and a maximum height of 37 feet.
7. A Development Variance is required to exceed a zoning district's development standards.
8. The site is subject site is located on the top of a hill which is a unique geologic feature in this valley.
9. The water company has identified that placement of a new tank at the same elevation is necessary in order to maintain adequate water pressure for the surrounding service area and water pressure balance between the two water tanks.
10. The subject site represents one of the few areas of the City that meet the elevation requirements for a water tank within this area.
11. The project proposes the removal of an existing 272-foot-diameter, 40-foot-high welded steel water storage tank and construction of a 280-foot-diameter, 39-foot-high water tank.
12. The new tank will be painted light green to help reduce the visual impact of the structure.
13. The project site includes several large trees to help screen the water tanks.
14. The proposed water tank will provide a better level of protection from failure in the event of a significant seismic event than that of the existing water tank.
15. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review requirements.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance, by use of a Development Variance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. Because of special circumstances uniquely applicable to the subject property, including, but not limited to, size, shape, topography, location or surroundings, but expressly excluding any consideration of the personal circumstances of the petitioner or of any changes in the size or shape of the subject property made or occurring while the subject property was situate in the zoning district in which it is situate at the time of the filing of the petition, regardless of whether such changes were caused by the petitioner or his predecessors in interest, the strict application of the requirements and regulations prescribed in this Title and referred to in Sections 20.100.1300 through 20.100.1330, deprives such property of privileges enjoyed by other property in the vicinity of and in same zoning district as the subject property, in that:
  - a) The subject property is less than 600 feet wide, making it impossible to establish the appropriate placement of water tank that is a vital public necessity.
  - b) The subject site is located on top of a hill with steep terrain and is substantially surrounded by flat areas of the Santa Clara Valley.
  - c) The existing hill provides one of the few opportunities to achieve the proper elevation requirements necessary to provide required water pressure to serve the needs of the community.
  - d) The proposed water tank serves an essential public necessity.
  - e) The proposed tank replaces an existing seismically inferior water tank.

The Variance, subject to such conditions as may be imposed thereon, will not impair the utility or value of adjacent property or the general welfare of the neighborhood, and will not impair the integrity and character of the zoning district in which the subject property is situate in that:

- a) The proposed water tank structure replaces a pre-existing water tank of similar size that is generally located in the same area.
- b) The existing water tanks were constructed prior to the development of most of the immediately surrounding area.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit/Development Variance shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Development Variance.** This permit fulfills the requirement for a Development Variance.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately

and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled "Dow Reservoirs-Tank #1," dated March 7, 2001 on file with the Department of City Planning, Building, and Code Enforcement, and to the San José Building Code.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
6. **Lighting.** No new lighting is approved under this permit.
7. **Colors and Materials.** All colors and materials are to be those specified on the approved plan set.
8. **Fencing.** No new fencing is approved under this permit.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
10. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
11. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161 for each phase, and is subject to the following requirements (3-14708) to the satisfaction of the Director of Public Works:
  - a). *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
  - b). *Soils Report.* A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City's Engineering Geologist prior to the issuance of a Public Works Clearance.
  - c). *Geologic Hazard Clearance.* The project shall conform to the terms and condition of the Geologic Hazard Clearance, as amended, prior to the issuance of a building permit as determined appropriate by the Director of Public Works.
12. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:



- a. *Construction Plans.* This permit file number, CP01-04-032 & V01-07-023, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
13. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DNL at the residential property line.
  14. **Noise.** The noise level from all operations on the subject site shall not be permitted to exceed 60 decibels DNL at the property line.
  15. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
  16. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified

within the time specified on the notice of violation; or

- c. The use as presently conducted creates a nuisance.

c: Building Division (2)  
Engineering Services